

225.7201

2006, if the system is not yet in development and demonstration (milestone B as defined in DoDI 5000.2).

[70 FR 8537, Feb. 22, 2005]

Subpart 225.72—Reporting Contract Performance Outside the United States

SOURCE: 70 FR 20839, Apr. 22, 2005, unless otherwise noted.

225.7201 Policy.

(a) 10 U.S.C. 2410g requires offerors and contractors to notify DoD of any intention to perform a DoD contract outside the United States and Canada when the contract could be performed inside the United States or Canada.

(b) DoD requires contractors to report the volume, type, and nature of contract performance outside the United States.

225.7202 Exception.

This subpart does not apply to contracts for commercial items, construction, ores, natural gas, utilities, petroleum products and crudes, timber (logs), or subsistence.

225.7203 Contracting officer distribution of reports.

Follow the procedures at PGI 225.7203 for distribution of reports submitted with offers in accordance with the provision at 252.225-7003, Report of Intended Performance Outside the United States and Canada—Submission with Offer.

225.7204 Solicitation provision and contract clauses.

Except for acquisitions described in 225.7202—

(a) Use the provision at 252.225-7003, Report of Intended Performance Outside the United States and Canada—Submission with Offer, in solicitations with a value exceeding \$10 million;

(b) Use the clause at 252.225-7004, Report of Intended Performance Outside the United States and Canada—Submission after Award, in solicitations and contracts with a value exceeding \$10 million; and

(c) Use the clause at 252.225-7006, Quarterly Reporting of Actual Con-

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tract Performance Outside the United States, in solicitations and contracts with a value exceeding \$500,000.

Subpart 225.73—Acquisitions for Foreign Military Sales

225.7300 Scope of subpart.

(a) This subpart contains policies and procedures for acquisitions for foreign military sales (FMS) under the Arms Export Control Act (22 U.S.C. Chapter 39). Section 22 of the Arms Export Control Act (22 U.S.C. 2762) authorizes DoD to enter into contracts for resale to foreign countries or international organizations.

(b) This subpart does not apply to—

(1) FMS made from inventories or stocks;

(2) Acquisitions for replenishment of inventories or stocks; or

(3) Acquisitions made under DoD cooperative logistic supply support arrangements.

[63 FR 43889, Aug. 17, 1998]

225.7301 General.

(a) The U.S. Government sells defense articles and services to foreign governments or international organizations through FMS agreements. The agreement is documented in a Letter of Offer and Acceptance (LOA) (see DoD 5105.38-M, Security Assistance Management Manual). The LOA—

(1) Lists the items and services, estimated costs, and terms and conditions of the sale;

(2) Is presented to the foreign customer; and

(3) Provides for signature of the foreign customer to indicate acceptance.

(b) Conduct FMS acquisitions under the same acquisition and contract management procedures used for other defense acquisitions.

(c) Separately identify known FMS requirements and the FMS customer in solicitations.

(d) Clearly identify contracts for known FMS requirements by marking “FMS requirement” on the face of the contract along with the FMS customer and the case identifier code.

(e) See 229.170 for policy on contracts financed under U.S. assistance programs that involve payment of foreign

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country value added taxes or customs duties.

[56 FR 36367, July 31, 1991, as amended at 63 FR 43889, Aug. 17, 1998; 68 FR 15632, Mar. 31, 2003; 70 FR 57192, Sept. 30, 2005]

225.7302 Procedures.

For FMS programs that will require an acquisition, the contracting officer will assist the departmental/agency activity responsible for preparing the LOA by—

(a) Working with prospective contractors to—

(1) Identify, in advance of the LOA, any unusual provisions or deviations;

(2) Advise the contractor if the departmental/agency activity expands, modifies, or does not accept any requirements proposed by the contractor;

(3) Identify any logistics support necessary to perform the contract; and

(4) For noncompetitive acquisitions over \$10,000, ask the prospective contractor for information on price, delivery, and other relevant factors. The request for information shall identify the fact that the information is for a potential foreign military sale and shall identify the foreign customer; and

(b) Working with the departmental/agency activity responsible for preparing the LOA to—

(1) Assist, as necessary, in preparation of the LOA;

(2) Identify and explain all unusual contractual requirements or requests for deviations; and

(3) Assist in preparing the price and availability data.

[56 FR 36367, July 31, 1991, as amended at 62 FR 2617, Jan. 17, 1997; 63 FR 43889, Aug. 17, 1998; 68 FR 15632, Mar. 31, 2003]

225.7303 Pricing acquisitions for FMS.

(a) Price FMS contracts using the same principles used in pricing other defense contracts. However, application of the pricing principles in FAR parts 15 and 31 to an FMS contract may result in prices that differ from other defense contract prices for the same item due to the considerations in this section.

(b) If the foreign government has conducted a competition resulting in adequate price competition (see FAR 15.403-1(b)(1)), the contracting officer shall not require the submission of cost

or pricing data. The contracting officer should consult with the foreign government through security assistance personnel to determine if adequate price competition has occurred.

[64 FR 49683, Sept. 14, 1999, as amended at 68 FR 15632, Mar. 31, 2003]

225.7303-1 Contractor sales to other foreign customers.

If the contractor has made sales of the item required for the foreign military sale to foreign customers under comparable conditions, including quantity and delivery, price the FMS contract in accordance with FAR part 15.

225.7303-2 Cost of doing business with a foreign government or an international organization.

(a) In pricing FMS contracts where non-U.S. Government prices as described in 225.7303-1 do not exist, except as provided in 225.7303-5, recognize the reasonable and allocable costs of doing business with a foreign government or international organization, even though such costs might not be recognized in the same amounts in pricing other defense contracts. Examples of such costs include, but are not limited to, the following:

(1) Selling expenses (not otherwise limited by FAR Part 31), such as—

(i) Maintaining international sales and service organizations;

(ii) Sales commissions and fees in accordance with FAR Subpart 3.4;

(iii) Sales promotions, demonstrations, and related travel for sales to foreign governments. Section 126.8 of the International Traffic in Arms Regulations (22 CFR 126.8) may require Government approval for these costs to be allowable, in which case the appropriate Government approval shall be obtained; and

(iv) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

(2) Product support and post-delivery service expenses, such as—

(i) Operations or maintenance training, training or tactics films, manuals, or other related data; and

(ii) Technical field services provided in a foreign country related to accident